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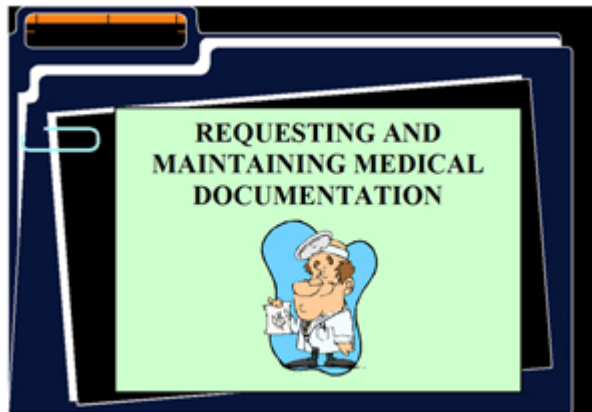
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Requesting Medical Documentation - When

Inger Marie Ailing is one of your hard working employees who accomplishes her duties in a timely manner, when she is at work! Ms. I. M. Ailing called in requesting sick leave on Monday, May 9th and remained out on sick leave until Friday, May 13th. Can you request medical documentation from her to determine that she was incapacitated for duty and entitled to use sick leave?

During the first week of May, Ms. I. M. Ailing submitted a request for annual leave on May 31st. Due to the needs of the service (and prior approved absences for three other employees on that date) you have disapproved her request. On Tuesday, May 31st, she called in requesting sick leave. Can you request that she provide medical documentation so that you can determine that she is truly ailing and not out on a lake sailing?

We hope you answered “yes” to these questions. An employer has the right to seek information about an employee’s medical condition when it is job related and consistent with business necessity. Examples of such situations are:

- When an employee is absent for more than three consecutive days.
- When an employee has misused or abused leave.
- When an employee is in a restricted leave status.
- When there is doubt that an employee can perform job duties upon returning from illness/injury.
- When an employee alleges a problem in performing a job function or working with others.
- When a disabled employee is in need of reasonable accommodation.

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Requesting Medical Documentation - What

Now that you know when to request documentation, exactly what should you request? Let's look again at the case of I. M. Ailing, as described above. In this case, you requested medical documentation from Ms. Ailing for the period May 9 to 13 because she was absent due to illness for more than 3 days. Upon her return to work, she provided you with a note from her health care provider which states, "Patient was seen on Monday, May 9, 2005." When you tell her the note is insufficient for her absence for the entire week, she provides a second note which states, "Patient was seen on Monday, May 9, 2005. She was under my care until Friday, May 13, 2005. She can return to work on Monday, May 16, 2005." Are these medical notes acceptable? Is there sufficient information for you to determine that Ms. Ailing was incapacitated for duty for the week of May 9? Of course not! Just because an individual was seen by a physician or is under a physician's care does not automatically make him/her incapacitated for duty. What next? Contact your servicing employee relations specialist for advice.

You also requested documentation from Ms. Ailing for May 31 based on the suspicion that she was abusing sick leave. On Wednesday, June 1, 2005, she provided you with hospital discharge papers indicating that she was seen in the hospital emergency room on Monday afternoon, May 30, 2005, for multiple bee stings and, due to an allergic reaction, was admitted to the hospital for treatment. She was discharged on Tuesday afternoon, May 31, 2005. Based on the documentation provided, we're sure you approved Ms. Ailing's sick leave request. Even though you have a suspicion that sick leave is being abused, the leave must be approved if the employee provides sufficient medical documentation to substantiate his/her absence.

Considerable discussion has taken place on what specific medical information can be requested from an employee. The only statutory limitations are those found in EEOC related laws and regulations that pertain to disability and

reasonable EEOC related laws and regulations that pertain to disability and reasonable accommodation situations. However, **the paramount guiding principle is that the employer should ask for all information that is necessary to make an appropriate business decision, but no more.** Examples of the kinds of information that has been sanctioned by case law in leave situations are:

- Date illness/injury began
- Expected duration or frequency of illness/injury
- Whether employee was incapacitated for duty on the dates of absence
- Prognosis
- Specific medical restrictions/limitations
- Information that enables the employer to determine whether an employee can perform specific job duties and to what extent, and/or accommodations that may be necessary.
- The medical explanation or basis of an absence or problem. In many cases, a diagnosis is not required to satisfy this criterion, but an explanation of symptoms or problems without a diagnosis will suffice. As an example, it is not necessary for a supervisor to know that an employee underwent a hysterectomy. A medical explanation such as "patient underwent medical inpatient surgery, is hospitalized, experiencing fever, fatigue, and bleeding, and requires a recuperation period of approximately four weeks" is more than enough explanation for a supervisor to make a leave decision.

Maintaining Medical Documentation

Now that Ms. I. M. Ailing has provided medical documentation, who can see this information? Although there are disputes about who can see medical information and what specific medical information should be released to a supervisor, supervisors are not prohibited from receiving and viewing medical information that they have requested from employees. Additionally, if medical information about an employee has been furnished to an agency doctor or medical officer,

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those employees with a “need to know” may obtain all or part of such information. A “need to know” is defined in this manner: Whenever information is important or required for an agency employee to make a legitimate agency business decision, the agency employee has a need to know the information. A decision to approve or disapprove leave is a legitimate agency business decision. The employer should request only the medical information that is required to make the appropriate decision. Is it appropriate to attach Ms. I. M. Ailing’s medical notes to her leave request forms or time and attendance reports? Please don’t say “yes.” Most medical information is considered confidential except to those who have a need to know. For that reason, agency employees who are privy to medical information should be careful not to discuss or reveal such information to anyone who does not have a need to know. An employee’s coworkers usually do not have a need to know medical information since they are not responsible for making decisions based on medical knowledge. Additionally, Privacy Act and other laws and regulations require that medical information be maintained in a secure place and manner in order to restrict access to anyone who is not authorized to view such information. For that reason, it is advisable for supervisors and managers to hold onto or store medical information at their desks or in their offices. Medical records should be filed and stored by a designated agency records custodian.

The agency has not yet determined whether a central medical records custodian will be established. Until that time, you can follow these tips in securing medical documentation:

- Designate a locking file cabinet for medical documentation only.
- Restrict access to the file cabinet to those individuals with a need to know.
- Remember that coworkers who do not make decisions based on medical knowledge do not have a need to know.
- Keep all medical documentation in the designated cabinet.

Medical Documentation Do’s and Don’ts

Do request documentation when appropriate.

Do keep medical documentation in a separate file and in a locked file cabinet.

Do restrict access to the medical files in your office to those with a need to know.

Do inform employees of what information is required when requesting medical documentation.

Do discuss the medical information with your supervisor or your servicing employee relations specialist if you need assistance in making a decision.

Do inform employees when documentation submitted is insufficient.

Do contact your servicing employee relations specialist for assistance and advice.

Don’t allow individuals without a need to know to view medical documentation.

Don’t attach medical documentation to a leave slip or time and attendance report.

Don’t leave medical documentation on your desk, in a conference room or out in the open for others to view.

Don’t discuss the medical information with other supervisors or the employee’s coworkers.

Don’t file medical documentation with other types of personnel records.

Letters and memorandums



In the **March 2005 Bulletin** we looked at the *Leave Restriction Letter*. In this issue we will take a look at another document that you may have occasion to use – a **Memorandum Documenting a Meeting to Correct Conduct/Performance Problems**.

Generally speaking, every incident of misconduct or poor performance will generate at least two documents. They are (1) a document describing the incident (which may be accompanied by other documents, including witness statements) and (2) a memorandum documenting your discussion of the incident(s) with the employee. This memorandum should contain, at a minimum, the following information:

- **What you told the employee.** *This will include the specific performance or conduct deficiencies that you discussed.*
- **How the employee responded.** *Don't forget that effective communication is generally a two-way street, so you will want to give the employee an opportunity to talk about the deficiencies that you have described.*
- **The corrective actions identified.** *Depending on the circumstances, these may be corrective actions imposed by you, or they may be actions that you have mutually agreed to with the employee.*

The following is a sample memorandum that you can use as a format when documenting your meetings with an employee:

TO: Employee

FROM: Supervisor

SUBJECT: Bad Stuff

On (date), I met with you in the (location). I explained to you that the purpose of the meeting was to discuss my observations of certain (conduct/performance) problems, and to identify ways to correct these problems. Specifically, I mentioned that I had (observed/overheard/been told about) the following:

SPECIFICS

I referred you to (note appropriate manual, directive, regulation, standard, etc., if applicable) and explained what was expected. I told you that (note specifics). I also referenced previous discussions of this issue on (note details). I asked for your feedback and comments. You told me that (note specifics).

With your input, we agreed to an action plan to correct the problems cited above. I agreed to (note specific actions to be taken), and you agreed to (note specific actions to be taken). We also agreed to meet again in/on (note when) to discuss the situation.

Supervisor

THE GRAND TOUR

If you think that this article has something to do with travel, you will be disappointed. The Grand Tour we are taking is through the first 10 issues of the Employee Relations Bulletin, visiting some of the major subject areas that we have addressed. Here we go:

1. COMMUNICATION. Some of you may recall the nearly disastrous encounter between the USS Coral Sea and a Canadian lighthouse off the coast of Newfoundland, described in the **June 2004 Bulletin**. As we noted in that article, sometimes our conversations are not unlike the one described. Communicating effectively is one of the most important, if not the most important, things you can do to deal with and prevent conduct and performance problems. Most of the time, you will be able to confront and resolve problems on your own, using the communication skills that you have learned. On some occasions, however, you may need some help. When this happens, don't forget the resources that are available to you, including your servicing employee relations specialists and your conflict management/dispute resolution staffs. Also take a look at the articles on this subject found in the **June 2002, September 2003, and September 2004 Bulletins**.

2. THE CONDUCT REGULATIONS. Nobody is expected to remember everything printed in the regulations pertaining to employee conduct (although we can all be held accountable for what is in those regulations), but you should at least be familiar with some of the more important sections, such as those dealing with attendance, misuse of Government property and conflicts of interest. Although the regulations governing conduct are found in several different sources, the most important regulations for you to have, and to be familiar with, are **USDA Personnel Bulletin 735-1 (Employee Responsibilities and Conduct)**, which is available at www.aphis.usda.gov/mrpbs (click "Human Resources" followed by "Employee Relations") and **5 C.F.R., Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch)**, which was issued by the U.S. Office of Government Ethics and is available at www.aphis.usda.gov/mrpbs. (Click "Human Resources" followed by "Ethics." This will bet you to the USDA website. Once there, click "Rules of the Road" followed by "General Ethics Laws and Regulations.") And don't forget to look at the **Ethics Corner** articles found in each Bulletin. Subjects have included gifts from outside sources, post-Government employment, gambling, political activity, solicitation for outside business or activity at work, and representation.

3. PREVENTING PROBLEMS. There are three ways to deal with conduct and performance problems – **avoid** them, **confront** them, or **prevent** them. Avoidance is generally our first and favorite strategy but, unfortunately, is normally not a good one, at least long-term, because few problems resolve themselves without intervention. We handle most problems by confronting them. Most of the articles that have appeared in the ER Bulletins have dealt with various ways to confront and resolve existing problems. But the real payoffs, if you can achieve them, are in the area of prevention. There are often things that you can do, prior to the development of problems, to prevent them from occurring, or if they do occur, to mitigate their impact. Several prevention strategies were discussed in an article entitled "Preventing Conduct and Performance Problems" in the **March 2004 Bulletin**. Also, when considering some of the strategies that you would use when confronting an existing problem, ask yourself, "How could I have used these same strategies earlier to help prevent the development of problems?"

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4. YOUR OPTIONS. Supervisors sometimes think that their hands are tied when it comes to dealing with conduct and performance problems. We certainly will not mislead you by claiming that dealing with such problems is easy. It never is, even under the best of circumstances. But supervisors do have tools available to use when confronted by conduct and performance problems. Many of these tools have been discussed in previous issues of the Bulletin. The use of *discipline* was discussed in the **September 2003 Bulletin**, and the use of various *non-disciplinary options* was addressed in the **December 2003 Bulletin**. We looked at *alternative disciplinary agreements* in the **September 2003 Bulletin**, noting the various circumstances in which they can be used effectively. The importance of using *the probationary period* was discussed in the **September 2004 Bulletin**. Several articles took a somewhat broader view of the subject. In the **December 2003 Bulletin**, we listed *"10 Rules to Remember"* when dealing with conduct and performance problems. The **September 2004 Bulletin** included an article entitled *"The Manager's Bill of Rights,"* and the **December 2004 Bulletin** included an article entitled *"What Supervisors Can Do to Ensure the Success of Corrective Actions."*

5. DOCUMENTATION. As we have noted on several occasions, effective documentation of conduct and performance problems is critical. What to document, and what not to document, have been discussed in several articles. Be certain to review the **February, June, and September 2003 Bulletins**, and the **December 2004 Bulletin**.

6. THE BIG PROBLEMS. Every problem is big, of course, when it is your problem. There are, however, some problems that tend to occur more frequently than others. In past issues of the Bulletin we have identified and discussed some of these problems. The issue of *travel credit card misuse* was discussed in the **June 2003** and **June 2004 Bulletins**. In the **June 2003 Bulletin** we also looked at another kind of misuse that appears to be growing – *computer misuse*. We discussed various *attendance problems* in the **September** and **December 2003 Bulletins**, and in the **March 2005 Bulletin**. We took a look at the problem of *workplace violence* in the **June 2004 Bulletin**, and we got to meet Ima Grouch, the *difficult employee*, in the **March 2004 Bulletin**. And, of course, we can't forget the ever popular *failure to comply with instructions*, which we looked at in the **December 2003 Bulletin**. We talked about *performance problems* in the **February** and **September 2003 Bulletins**, and we looked at some dilemmas that supervisors sometimes encounter – *"What to Do When You Inherit a Problem"* and *"Working With Employees at Remote Locations"* – in the **March 2004 Bulletin**. We even had a supervisor talk about his experiences in the **June 2004 Bulletin**. We will continue to look at common problems in future issues of the Bulletin, and we invite your input and comments.

7. COMMUNICATION. Well, like all "Grand Tours," this one ends where it started – with communication, the essential step we need to master to effectively confront and prevent conduct and performance problems. One of the reasons that we publish notices each quarter regarding the training opportunities available to supervisors is that the skills learned in these sessions can help you deal with many of the employee problems that you will face as a supervisor. Take advantage of any opportunity you have to participate in such training. The rewards will be worth the time spent.

We hope you enjoyed the tour, and will continue to join us as we travel through the world of conduct and performance problems (okay, so now we're reaching a bit with this "travel" theme). (NOTE: An index of the Bulletin articles published in 2003 and 2004 can be found in the **December 2004 Bulletin**.)

THE ETHICS CORNER

GIFTS BETWEEN EMPLOYEES



We live in an environment where it is generally customary to give gifts on certain occasions. It is not unusual for employees to give a gift to their co-workers at various times during the year, and for the most part this practice is permissible. Employees may solicit voluntary contributions of nominal amounts from co-workers to purchase a cake to celebrate a staff member's birthday, or "Boss's Day." It is also permissible for an employee returning from a vacation at the beach to give his or her supervisor a box of salt-water taffy to be shared within the office. These examples of sharing gifts within the workplace are within the rules of accepting gifts from employees.

There are two rules which address gifts between employees, and the rules are:

1. You may not give a gift to your supervisor or anyone up the chain-of-command.
2. You may not accept a gift from any lesser paid employee. This rule does not apply to acceptance of gifts from a lesser paid employee where there is a personal relationship; **and** there is **NO** supervisor/employee relationship.

There are additional exceptions to the above cited rules.

There are the **general exceptions** where on an occasional basis, including occasions on which gifts are traditionally given or exchanged, a supervisor may be given and may accept:

- Items (not cash) worth \$10 or less per occasions (aggregate market value);
- Items to be shared in the office among several employees;
- Personal hospitality at a residence of a type normally provided to friends.
- Items customarily given in receipt of personal hospitality.

There are the **special exceptions** where suitable gifts may be give and/or exchanged in relation to:

- Infrequently occurring occasions of personal significance (e.g., marriage, illness, birth/adoption, etc.).
- Occasions that end a subordinate-official superior relationship (e.g. retirement, resignation, or transfer).

Example 1: Billy is moving to a new division. Sharon, his subordinate, wants to give him a crystal beer stein worth \$100. Since the subordinate-official supervisory relationship is ending, the gift is proper. Sharon may ask other co-workers to donate towards the gift. However, she may not recommend an amount to be donated, nor should she pressure co-workers to give anything. All contributions towards the gift must be voluntary. However, if

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the supervisor was being promoted to a higher grade position within Sharon's supervisory chain, the above-cited gift would be inappropriate.

Example 2: Helen gave her supervisor a \$7 mug for Boss' Day. The supervisor may accept the mug because it is worth less than \$10.

REMINDER: The work environment is constantly changing, and it is becoming more difficult to identify the contract employees from the Government employees, because we are working side by side in the workplace. However, the Government employees may not solicit, nor may they accept donations from contract employees for the occasions listed above. There are no exceptions.

If you should have any questions regarding any ethics issues, please contact Mary Royster at (202) 720-9858, the email address is mary.a.royster@aphis.usda.gov.

So What Does This Have to Do With Employee Relations?

Give us a second and we will think of something. Nope, can't think of anything (although we suppose there could be, on occasion, a relationship to leave abuse). Anyway, here are nine "Golf Truisms" supplied to us by Bob Kraft, our APHIS ER team leader in Raleigh (shows where his mind is at).

- ◆ **Golf balls are like eggs – they're white, sold by the dozen, and a week later you have to buy more.**
- ◆ **A pro-shop gets its name from the fact that you have to have the income of a professional golfer to buy anything.**
- ◆ **When you stop to think about it, did you ever notice that it's a lot easier to get up at 6:00 a.m. to play golf than at 10:00 a.m. to mow the lawn.**
- ◆ **It takes longer to learn good golf than it does brain surgery. On the other hand, you seldom get to ride around on a cart, drink beer and eat hot dogs while performing brain surgery.**
- ◆ **A good drive on the 18th hole has stopped many a golfer from giving up on the game.**
- ◆ **Water hazards are no walk in the park for fish, turtles, frogs or gators either.**
- ◆ **A good golf partner is one who's slightly worse than you.**
- ◆ **If a storm is rolling in, you will be having the game of your life.**
- ◆ **If your opponent has trouble remembering whether he or she shot a six or seven, he/she probably shot an eight.**

TRAINING OPPORTUNITIES

Fundamentals of APHIS Human Resource Management (FAHRM)

(Required Training for New APHIS Supervisors in a Probationary Status)

The **Fundamentals of APHIS Human Resource Management (FAHRM)** Blended Learning course, complies with OPM and USDA requirements that **all new APHIS supervisors** demonstrate competency in Human Resources Management (HRM). The leadership competency requirements are listed under the heading of APHIS Leadership Effectiveness Framework (APHIS LEF) at the OPM website. The email address is www.aphis.usda.gov/mrpbs/index.html. At this screen, select "Training and Employee Development, Non-Technical Training." The APHIS LEF is Appendix 2 of the Using Learning Contracts brochure listed.

The HRM performance requirements read: "ensures effective recruitment, selection, training, performance appraisal, recognition, and corrective/ disciplinary action; promotes affirmative employment, good labor relations and employee well-being." FAHRM includes 40 hours of classroom instruction, over 12 hours of web seminars (using the telephone and the internet) and other self-paced, self-study learning required to meet the above stated requirements.

Application and Enrollment Procedures. The FAHRM Training Announcement for calendar year 2005 with course dates, locations, application and enrollment process, and APHIS 601, FAHRM course application, is found at the Training and Development website address:

www.aphis.gov/mrpbs/training_employee_development.html

The next FAHRM course will be held in **San Diego, California** from **September 12 to 16, 2005** (40 hours of classroom instruction). **PLEASE NOTE** that the new expanded classroom hours are Monday to Friday, 8:00 a.m. to 4:30 p.m. Other pertinent information regarding this class is as follows:

Web Seminar Dates: August 8 - 12, 2005 – 1:00-3:30 p.m. ET

Deadline for Application: July 11, 2005

For Additional Information Contact:

FAHRM Program Manager, 301-734-8554 or betsy.m.guardiola@aphis.usda.gov

FAHRM Program Assistant, 301-734-5551 or Tanya.briscoe@aphis.usda.gov

In addition to the training opportunity listed above, we encourage you to take advantage of the many other training opportunities, offered through a variety of sources, which will help you to effectively carry out your supervisory responsibilities. The employee development staffs in the MRP agencies can help you identify such opportunities.




SOME REFLECTIONS ON LEARNING


You must learn from the mistakes of others. You can't possibly live long enough to make them all yourself. – Sam Levenson

Human beings, who are almost unique in having the ability to learn from the experience of others, are also remarkable in their apparent disinclination to do so. - Douglas Adams

THE BULLETIN BOARD



 **WEBSITE CLARIFICATION.** In the **March 2005 Bulletin**, we provided a couple of websites where you could find conduct regulations. One of the addresses provided was incomplete, and there is, in fact, a simpler way to find **5 Code of Federal Regulations (CFR), Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch)** than the one given to you in March. Just go to www.aphis.usda.gov/mrpbs. Once you are at this site, click “*Human Resources*” followed by “*Ethics*.” This will get you to the USDA website. Once there, click “*Rules of the Road*” followed by “*General Ethics Laws and Regulations*.”

 **STAFF CHANGES.** We welcome another new employee this month. She is **Eunice Aiken Everett**, and she is joining our APHIS Employee Relations staff in Raleigh. We also have a name change – Jodi Foley is now **Jodi Hallstrom**.

EMPLOYEE RELATIONS DIRECTORY

APHIS

Riverdale

Kathy Welsh, *Branch Chief* (301) 734-4414
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Keela Harris, *ER Assistant* (202) 720-1055
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Mary Royster, *ERS - MRP Ethics Advisor (Financial Disclosures, Outside Employment, Conflicts of Interest)* (202) 720-9858
Jason Thomas, *ERS - Fruit & Vegetables, Other* (202) 690-3011
Vacant, *Administrative Assistant* (202) 720-5721
Vacant, *ERS - Cotton, Dairy, Poultry, Science & Technology* (202) 720-5721
FAX: (202) 720-3039

Previous issues of the Bulletin are available at www.aphis.usda.gov/mrpbs. Just click "Human Resources" and then "Employee Relations." Questions, comments and ideas for future Bulletin articles can be directed to ER.Bulletin@aphis.usda.gov.